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**UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF WYOMING**

STEPHANIE WADSWORTH, Individually
and as Parent and Legal Guardian of W.W.,
K.W., G.W., and L.W., minor children, and
MATTHEW WADSWORTH,

Plaintiffs,

v.

WALMART, INC. and JETSON
ELECTRIC BIKES, LLC,

Defendants.

Case No.: 2:23-cv-00118-NDF

JURY TRIAL DEMANDED

**PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' NOTICE OF ERRATA FILED
ON DECEMBER 20, 2024**

COME NOW, the Plaintiffs, Stephanie Wadsworth, individually and as parent and legal guardian of W.W., K.W., G.W., and L.W., minor children, and Matthew Wadsworth, (hereinafter "Plaintiffs") by and through their counsel of record Rudwin Ayala, Esquire and Morgan & Morgan, and submit this Motion To Strike Defendants' Notice of Errata filed on December 20,

2024, and respectfully request that this Honorable Court exclude all additional evidence the Defendants' now provide to the Court for consideration together with their Motion for Summary Judgment. As grounds thereof, Plaintiffs state as follows:

1. This Court's Order on Initial Pretrial Conference entered on November 1, 2023 set the deadline for the parties to file all dispositive motions and Daubert motions by October 15, 2024. This Order stated "[a]ll briefs, affidavits, and other materials in support of the party's motion or opposition are due by the above filing deadlines." (Doc. #48)

2. An Amended Scheduling Order was entered on September 3, 2024, extending said deadline for dispositive and Daubert Motions to November 7, 2024, including "briefs and materials in support thereof". (Doc. #78)

3. On or about October 21, 2024, the parties attended a telephonic hearing on Plaintiffs' Motion for Extension of Time to File Dispositive Motions, or in the Alternative Motion to Continue Trial, on the basis that all of Defendants' expert witnesses were not scheduled for deposition prior to the November 7, 2024 deadline for filing dispositive and Daubert motions set forth in this Court's Order on Initial Pretrial Conference. (Doc. #92)

4. In response to Plaintiffs' Motion for Extension, and as argued at the aforementioned hearing, Defendants strenuously argued against any extension of time, maintaining that the Plaintiffs were aware of the November 7th deadline for filing of dispositive motions for months.

5. However, the Court found good cause to extend the deadlines, and entered an Order extending the deadline for filing dispositive and Daubert Motions to December 2, 2024, together with all briefs and materials in support thereof. (Doc. #91 and #92)

6. On December 2, 2024, Defendants filed a Motion for Summary Judgment, together with exhibits purportedly supporting their request. (Doc. #96 and #99)

7. Plaintiffs' filed their response to said Motion for Summary Judgment on December 16, 2024, as required by the Court. (Doc. #118 and #119)

8. On December 20, 2024, Defendants filed a Notice of Errata, attempting to add additional portions to their previously filed exhibits in support of their Motion for Summary Judgment. (Doc. #124)

9. Defendants have claimed an "inadvertent clerical error" for the omission of the additional documents from their initial filing nearly 3 weeks prior, however, have failed to provide any explanation for what prevented them from submitting these documents in the months prior to the December 2, 2024 deadline.

10. None of the additional materials Defendants now attempt to add to their prior submissions were unavailable at the time of their December 2nd filing. In fact, they were available for months prior to December 2nd.

11. Defendants were the ones arguing that the original November 7, 2024 deadline should not be extended, and that Plaintiffs' should not be given additional time to submit materials regardless of the reasons.

12. Additionally, Plaintiffs filed a Motion to Amend Expert Disclosures on or about September 3, 2024, stating in part that that due to an accidental error they failed to identify their forensic economist on their initial expert disclosure. This request to amend the expert disclosure was made before Defendants' expert disclosure was due (in which they named an economist), however, Defendants adamantly objected to the relief sought claiming that Plaintiffs had sufficient time to ensure their expert disclosure was correct when filed. (Doc. #76 and #79) The Court entered an Order denying Plaintiffs' request to amend their expert disclosure, despite the inadvertent omission cited by Plaintiffs. (Doc #93)

13. Now, Defendants seek this Court's assistance in further prejudicing the Plaintiffs by adding documents beyond the Court's deadline for dispositive motions and all supporting evidence, in contravention of Fed. R. Evid. 56. and this Court's Amended Scheduling Order. That the additional documents might be a part of previously filed exhibits should make no difference.

14. Defendants had sufficient time to ensure the correctness of their summary judgment filings prior to December 2, 2024.

15. In order to ensure consistency, fairness, and equal treatment among the parties in ruling, as well as compliance with the Court's Amended Scheduling Order, Plaintiffs' respectfully request that this Court strike Defendants' Notice of Errata and exclude the additional materials Defendants attempt to have the Court consider with their Motion for Summary Judgment through their late Notice of Errata filed on December 20, 2024.

16. Alternatively, if the Court is inclined to allow the Defendants to now amend their prior filing, Plaintiffs' request an extension of time to file any additional materials to support their previously filed motions, and responses thereto from December 2nd and December 16th, 2024.

Date: December 23, 2024

Respectfully Submitted,

/s/ Rudwin Ayala

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 23, 2024, a true and correct copy of the foregoing was electronically served to all counsel of record.

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